Abu Bakar, have filed a claim for damages against the defendants under sections 7 and 8 of the Civil Law Ordinance, 1956, for the benefit of the estate as well as for the benefit of the dependants of the deceased, who died from injuries suffered as a result of a motor accident alleged to have been caused by the negligent driving of the 1st defendant of motor-car KC 4850 as servant or agent of the 2nd defendant on June 1, 1975.

Mr. Baldev Singh appeared for the plaintiffs and Mr. L.H. Singh, for the defendants. Having heard both arguments, I dismiss the application with costs. My views are as follows:—

The discretionary powers of the court in relation to striking out proceedings of this nature are provided by Order 19 rule 27 and Order 25 rule 4 of the Rules of the Supreme Court. Order 19 rule 27 empowers the court at any stage of the proceedings to strike out a pleading which may be unnecessary, scandalous or which may tend to prejudice, embarrass, or delay the fair trial. Order 25 rule 4 empowers the court to do likewise in cases where (1) the pleading discloses no reasonable cause of action, and (2) the action or defence is frivolous or vexatious. If the action is dismissed, judgment may be entered accordingly.

As a general rule, the order under the above is an interlocutory order. It is only in plain and obvious cases that recourse should be had to this summary procedure. The mere fact that the case is weak and unlikely to succeed is no ground for striking out a pleading.

The next point is to consider to what extent the court is entitled to examine while exercising its power. Under Order 25 rule 4, where the allegation is that the Statement of Claim discloses no reasonable cause of action, only the plaint and its documents alone should be considered and all allegations in it should be assumed to be true. That was held by the Court of Appeal in *Peck* v. *Russel & 2 Ors.*[1] In that case, the facts were that the question whether the plaint disclosed a cause of action became involved with other questions of fact and law based on the allegation of fraud. The rule has no application where the court is required to go through extrinsic evidence to show that the pleading is bad (see *Attorney-General of the Duchy of Lancaster* v. *London & North Western Railway Co.*[2]). It must be tried upon the allegations contained in the pleading, and evidence in support of the applicant's case is not admissible (see *Republic of Peru* v. *Peruvian Guano Co.*[3]).

The next question is whether affidavits are admissible under this rule. Where the ground for striking out the Statement of Claim is that it discloses no reasonable cause of action, no affidavit is admissible. That is clear from the terms of the rule itself (per Chitty J. in *Republic of Peru* v. *Peruvian Guano Co., supra*). However, with regard to the second limb of the rule relating to frivolous and vexatious action, the inherent jurisdiction of the court remains unaffected under Order 19 rule 27, Rules of the Supreme Court. Affidavits are admissible not by virtue of the rule. but by virtue of the general jurisdiction of the court (per Chitty J. in *Republic of Peru* v. *Peruvian Guano Co., supra*, at page 498). The court is entitled to look at the affidavits as to the history of the matter, and if in that light, the action was vexatious or frivolous, the pleading could be struck out and the action dismissed (per Lord Parker, C.J. in *Re Vernazza,*[4] as affirmed by the Court of Appeal[5]).

Taking into consideration the above principles, I dismiss the preliminary objection by Mr. L.H. Singh and hold that the affidavits filed by the applicants are admissible. I am entitled not only to look at the pleadings, but also to the affidavits filed in order to enable me to consider the application in its proper perspective.

The next issue is whether the Statement of Defence is vexatious or frivolous. The plaintiff's affidavit firstly attacks the Particulars of Negligence pleaded in the Statement of Defence of the 1st defendant, and maintains that they are mostly standard defence. He also refers to the Police Report lodged by the 1st defendant after the accident and contends that it amounts to an admission of negligence on the defendant's part. With respect, I cannot agree. Firstly, it is premature at this stage to accept that negligent acts alleged by the defendant are standard defence, in the absence of determining other relevant factors and surrounding circumstances immediately before the accident. It is for the defendant to prove the particulars of such negligence on the part of the deceased, as pleaded in the defence. In a claim for damages for negligent acts of this nature, it is not safe for the court to base on the sketch plan and Police Report alone in order to determine whether the defendant is solely negligent or the deceased was also liable for contributory negligence as pleaded at paragraph 3 of the Statement of Defence. My view is that it is necessary to hear extrinsic evidence in open court by calling witnessess who will have to be examined, cross-examined and re-examined with a view to deciding the whole issue fairly and justly. For this reason, I dismiss the application and order that the costs should be to respondents in any event.

Application dismissed.

Solicitors: *Triptipal Singh; L.H. Singh & Co.*

PUBLIC PROSECUTOR v. SU LIANG YU

[O.Cr.J. (Hashim Yeop A. Sani J.) May 3, 1978]

[Ipoh — Criminal Trials Nos. 11, 12 and 13 of 1976]

Criminal Law and Procedure — Public Prosecutor transfering case to High Court — No reasons given — Case ordered to be tried in Sessions Court — Criminal Procedure Code (F.M.S. Cap. 6), s. 418A — Courts of Judicature Act, 1964, Schedule, para. 12.

In this case a number of charges of alleged corruption was brought against the respondent and the Public Prosecutor had directed that the case be tried in the High Court. No reasons were given for the case to be heard in the High Court. The respondent is a Member of Parliament.

Held: as no reasons were given why the case should be heard in the High Court, the case should be transferred to the Sessions Court for trial.

Cases referred to:-

(1) *Public Prosecutor* v. *Su Liang Yu* [1976] 2 M.L.J. 128.

(2) *Datuk Haji Harun bin Haji Idris* v. *Public Prosecutor* [1977] 2 M.L.J. 155.

CRIMINAL TRIAL.

Datuk Haji Mohamed Eusoff bin Chin (Senior Federal Counsel) for the Public Prosecutor.

Paramjit Singh (*S.I. Rajah, K. Chandran* and *Harbinder Singh* with him) for the respondent.

Hashim Yeop A. Sani J.: The accused, a Member of Parliament, appeared before me last year, his case having been transferred from the Sessions Court, Lumut, to the High Court, Ipoh, under section 418A of the Criminal Procedure Code. The accused was then charged on twelve counts under section 4(c) of the Prevention of Corruption Act, 1961 for allegedly using false certificates pertaining to certain development projects in Lumut District, Perak. It was then agreed to proceed only with three of the charges first, the total amount of money involved in the three charges being $2,000.

In that proceeding counsel for the accused raised a preliminary objection on the validity of section 418A of the Criminal Procedure Code. I made my ruling in *Public Prosecutor* v. *Su Liang Yu*[1] and this ruling was upheld in another case by the Federal Court.[2]

On April 17, 1978 the case was again brought before me to proceed with the same charges. At the commencement of the proceeding the learned Deputy Public Prosecutor tendered the amended charges which differed only in format but not in substance from the original charges. Before the charges were read to the accused I asked the learned Deputy Public Prosecutor as to the reason why this case should be heard in the High Court and not in the Sessions Court since only not so long ago three accused persons were charged in the Taiping Sessions Court and the original charges were under the same section of the same Act involving a sum of money far exceeding the present charges before me — to be exact, the total amount being over $3 million (*vide* Taiping Sessions Court Arrest Cases No. SC(A) 39/76 and 1-3/77). The learned Deputy Public Prosecutor candidly replied that he himself was not aware of any reason why this case should be heard in the High Court. I emphasised to both counsel that what was decided before in *Su Liang Yu's case* was the question of the validity of section 418A of the Criminal Procedure Code and whether the Public Prosecutor *has* the power to transfer the case from the lower court to the High Court. Thus that is what section 418A is all about. My answer was in the affirmative as was also confirmed by the Federal Court. Section 417 of the Criminal Procedure Code sets out the power of the High Court itself to transfer cases to itself or from a subordinate court to another subordinate court having regard to all or any of those considerations set out in subsection (1) of that section. One would easily and falsely come to a conclusion that there appears to be a lacuna in section 417 of the Criminal Procedure Code in that as it is, it is a one-way traffic in the sense that the High Court, using any of the criteria set out in subsection (1), may transfer a case from one subordinate court to another or from a subordinate court to itself (the High Court). That section does not however give the power to transfer a case from the High Court to a subordinate court. On looking at section 417 calmly one can then see the rationale of it and that is that a case which was triable by a subordinate court was never brought by the Public Prosecutor before the High Court. The new section 418A has changed all that. Now I was confronted with a case which was within the competency and jurisdiction of a subordinate court to hear but was brought by the Public Prosecutor under the new section 418A giving no reason whatsoever for doing so. Not that the section requires the Public Prosecutor to set out the reasons. But common sense can sometimes tell the reason, like difficult points of law involved or any element of public interest. In my view what is unwritten in section 418A is the question of difficulties in points of law involved or the question of public interest. The latter is absolutely within the domain of the Public Prosecutor provided that he is candid about it and the situation is convincing enough to the court for I do not think that the power of the High Court as set out in paragraph 12 of the Schedule to the Courts of Judicature Act, 1964 should be taken lightly. That paragraph reads as follows: —

> "12. Power to transfer any proceedings to any other court or to or from any subordinate court, and in the case of transfer to or from a subordinate court to give any directions as to the further conduct thereof:
>
> Provided that this power shall be exercised in such manner as may be prescribed by any rules of court."

Since the learned Deputy Public Prosecutor in this case admitted himself that he did not know of any reason why this case should be heard in the High Court (and in fact he himself kindly pointed out the power of the High Court under the Schedule to the Courts of Judicature Act, 1964) this convinced me that the sole reason why this case was transferred to the High Court was the fact that the accused was a Member of Parliament and this I think was, with due respect, a false reasoning. Hundreds of this type of cases have been dealt with by the Sessions Court throughout the country. When the case is within the competency of the subordinate court and it appears that there is no difficulty in questions of law or there is no mention or indication of matter of public interest involved the sole fact that the accused person is a Member of Parliament does not entitle him to be charged and be heard in a court higher than the court of competent jurisdiction. All are supposed to be equal before the law and I can never accept the exception that some be made more equal than others.

For this reason I ordered the case to be transferred to and be disposed of by the Sessions Court, Ipoh, instead of the Sessions Court, Lumut, for the simple reason that the accused is a Member of Parliament for a constituency including Lumut and therefore in fairness to all concerned, the case should be heard in Ipoh and not in Lumut.

Order accordingly.

Solicitors: *Paramjit & Harbinder.*